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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/156901

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on May 15, 2014, at West Bend, Wisconsin.

NOTE: The record was held open to see if the agency could produce a copy of what was sent to Petitioner's spouse on October 23, 2013. Mr. Benedum submitted an e-mail to Ms. Hetzel and ALJ Ishii on May 15, 2014. It has been marked as Exhibit 4 and entered into the record. Also on May 15, 2014, Mr. Benedum faxed a copy of the envelope that held mail that was sent to the Petitioner, but returned on October 18, 2014. This has been marked as Exhibit 5 and entered into the record.

The issue for determination is whether Washington County Department of Social Services (the agency) correctly denied the Petitioner's application for Institution Long Term Care Medicaid Benefits for December 2013, January 2014 and February 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Donald Geib  
c/o Janet Geib  
840 Weinert Rd #208  
West Bend, WI 53095

Representative:

Janet L. Hetzel  
ADRC Supervisor  
ADRC of Washington County  
333 E. Washington St., Suite 1000  
West Bend, WI 53095

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Ken Benedum, Economic Support Specialist  
Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On August 13, 2012, the Petitioner applied for and was found eligible for Nursing Home Long Term Care Medicaid benefits. (Exhibit 3, pg. 1)
3. On November 9, 2012, the agency sent the Petitioner and his wife a notice indicating that the Petitioner must transfer \$7,134.65 in assets to his wife by September 30, 2013 in order to retain his Medicaid enrollment, because the asset limit is \$2000. (Exhibit 3, pg. 3)
4. That same notice indicated that the agency would be sending the Petitioner a notice in August 2013, to remind him to transfer his assets by September 30, 2013. There is no record of any such notice being issued in August 2013. (Exhibit 3, pg. 3; testimony of Mr. Benedum)
5. On October 14, 2013, the agency sent Petitioner a notice indicating that he needed to complete a renewal by November 2013 in order to continue receiving Medicaid benefits. (Exhibit 3, pgs. 6-9)
6. On October 18, 2013, the notice was returned to the agency because Petitioner's spouse moved. (Exhibit 5)
7. On October 23, 2013, the agency re-mailed the October 14<sup>th</sup> notice to Petitioner/Petitioner's spouse at the forwarding address indicated on the returned envelope. (Exhibit 2, attachment 7; Exhibit 5)
8. On November 18, 2013, the agency sent the Petitioner, at the new address, a notice indicating that his Medicaid benefits would be ending effective December 1, 2013 because he had not completed his renewal. The notice further instructed the Petitioner to contact the agency by the end of the month, if he wanted to continue receiving benefits. (Exhibit 3, pgs. 10-13)
9. The Petitioner did not complete the renewal and his case closed effective December 1, 2013. (Exhibit 3, pg. 1)
10. The Petitioner filed a new application for Medicaid benefits on March 6, 2014 and requested a three-month back date. (Exhibit 3, pg. 1)
11. On March 27, 2014, the agency sent Petitioner a notice indicating that he was not eligible for Medicaid benefits in December 2013, January 2014 and February 2014, because he was over the asset limit. (Exhibit 1)
12. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 16, 2014. (Exhibit 1)
13. Petitioner and his wife had a joint bank account. The December 2013 statement indicated a balance of \$11,231.80. The January 2014 statement indicated a balance of \$11,232.75 and the February 2014 statement indicated a balance of \$11,233.70. (Exhibit 3, pgs. 15-17)
14. Petitioner's name was removed from the joint account on March 7, 2014. (Exhibit 3, pg. 1)

### **DISCUSSION**

According to Medicaid Eligibility Handbook (MEH) §18.4.6.2.2, "if the institutionalized spouse remains Medicaid eligible after the 12-month transfer period, but subsequently becomes ineligible and remains institutionalized, spousal impoverishment asset rules would not applicable if s/he should reapply."

“If the institutionalized person reapplies for Medicaid, his/her asset limit would be \$2000 and the spouse’s assets would not be counted...” *MEH §18.4.6.2.2*

In the case at hand, the 12-month transfer period ended September 30, 2013. The Petitioner has never left the institution. The Petitioner remained Medicaid eligible through November 30, 2013, two months after the 12-month transfer period ended. Consequently, when the Petitioner reapplied for Medicaid benefits on March 6, 2014, his asset limit was \$2000 and his spouse’s assets should not have been counted.

As of March 7, 2014, the Petitioner had no assets in his name and it is undisputed that the agency correctly determined that the Petitioner was eligible for Institution Long Term Medicaid for the month of March 2014. However, the Petitioner’s spouse requests that his benefits be backdated to December 1, 2013.

Benefits may be backdated to the first of the month, three months prior to the application month. *MEH §2.8.2* However, benefits may only be back dated for those months in which the applicant would have been eligible, had he applied in that month. *Id.*

In December 2013, January 2013 and February 2013, the Petitioner still had a jointly held bank account with his wife with a balance of roughly \$11,200.

When a Medicaid applicant shares a joint account with another person who is also an elderly, blind or disabled applicant/member, an equal share of the account is attributed to each account holder. *MEH §16.4.1.1* If the applicant shares a joint account with a person who is NOT an elderly, blind or disabled applicant/member, the entire amount of the account is attributed to the applicant. *MEH §16.4.1.2*

It is not clear from the record whether Petitioner’s spouse is an elderly (over age 65), blind or disabled member of the Medicaid program, herself. However, even if one assumes this is the case, at least one half of the joint account would be attributed to the Petitioner. One half of \$11,200 is \$5600, which is over the \$2000 asset limit. As such, the agency correctly denied Petitioner’s request to back date his Medicaid benefits to December 1, 2013.

The Petitioner asserts that even if the agency correctly denied the backdate, that it never should have terminated his benefits effective December 1, 2013. However, a hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely.

An appeal of a negative action by a county agency concerning Medicaid benefits must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.2. A negative action can be the denial of an application, the reduction of benefits or the termination of an ongoing case.

In the case at hand, the Petitioner’s spouse indicated that she timely received the notice concerning the termination of her husband’s benefits in November 2013. The termination of Petitioner’s benefits became effective December 1, 2013. As such, he had 45 days from December 1, 2013 to file an appeal, which put the appeal deadline at January 16, 2014. The Petitioner’s spouse did not file an appeal on his behalf until April 15, 2014, well past the 45 day deadline. Thus, the appeal was untimely, and no jurisdiction exists for reviewing whether the agency correctly ended the Petitioner’s Medicaid benefits on December 1, 2013.

The Petitioner’s spouse also argued that because she did not receive a notice in August 2013 to transfer her husband’s assets by September 30, 2013, that she was not given fair notice concerning the need to transfer assets out of her husband’s name, and as such, it is not fair to count the assets against the Petitioner.

First, the agency never terminated the Petitioner's benefits for failing to transfer assets by September 30, 2013. Petitioner's first period of eligibility ended because he failed to complete a renewal. Second, the Petitioner was made aware, one year in advance, of the need to transfer his assets and I have found no provision in State Statute, Administrative Code or in the Medicaid Eligibility Handbook that requires additional notice. Third, the Petitioner is making an equitable argument, but it is well established that administrative law judges do not possess equitable powers and must follow the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). "As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).)

### **CONCLUSIONS OF LAW**

The agency correctly denied the Petitioner's application for Institution Long Term Care Medicaid Benefits for December 2013, January 2014 and February 2014.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

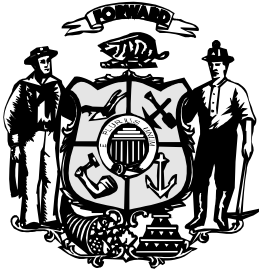
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of June, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 25, 2014.

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